IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 35425 of 2004(P)

PETITIONERS:

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1. **SREENI K.K.,**
   KOLLASSERRIL HOUSE, CHEEYAMBAM P.O.,
   PULPALLY (VIA), WAYANADU DISTRICT.

2. **JILSY JOSEPH,**
   POOVATHOTTATHIL HOUSE, SASIMALA P.O.,
   PULPALLY (VIA), WAYANADU DISTRICT.

3. **SREEJA C.S.,**
   CHERANKANDATHIL HOUSE, AMBALAVAYAL P.O.,
   SULTHAN BATHERY, WAYANADU DIST.

BY ADV. SRI.JOSE ABRAHAM
SRI.ANIL THOMAS (MELEMALAYIL)

RESPONDENTS:

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1. **THE REGISTRAR OF CO-OPERATIVE SOCIETIES,**
   OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
   THIRUVANANTHAPURAM.

2. **THE JOINT REGISTRAR OF CO-OPERATIVE**
   SOCIETIES (GENERAL), OFFICE OF THE JOINT REGISTRAR
   OF CO-OPERATIVE SOCIETIES, KALPETTA,WAYANADU DIST.

3. **THE WAYANADU DISTRICT CO-OPERATIVE**
   BANK LTD., KALPETTA, WAYANADU DISTRICT,
   REPRESENTED BY ITS SECRETARY.

4. **T.MOHANAN,**
   PRESIDENT, THE WAYANADU DISTRICT CO-OPERATIVE
   BANK LTD., KALPETTA, WAYANADU DISTRICT.

5. **THE KERALA PUBLIC SERVICE COMMISSION,**
   REPRESENTED BY ITS CHAIRMAN.

6. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, STATE SECRETARIATE,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC - R5
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN (SR) R1,R2 & R6
SRI.K.P.DANDAPANI (SR) R3 & R4
SRI.JOSE ABRAHAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/02/2007, ALONG WITH WPC NO. 27579 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.35425/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COMPLAINANT DT.20.9.04 ADDRESSED TO THE CHIEF MINISTER BY THE 1ST PETITIONER.

EXT.P2:- COPY OF THE COMMUNICATION NO.3275/04/ST DT.22/9/04 ADDRESSED BY THE 2ND RESPONDENT TO THE DISTIRICT COLLECTOR , WAYANAD WITH A COPY TO THE 1ST PETITIONER.

ADDL.EXT.P3:- COPY OF THE BUDGET 2005-06 AND THE EXPLANATION OF THE SAME ISSUED AND CIRCULATED BY THE 3RD AND 4TH RESPONDENTS ON THE OCCASION OF THE GENERAL BODY MEETING OF THE BANK ON 7.2.05.

ADDL.P4:- COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT NO.CB/5/5596/2004

ADDL.P5:- COPY OF THE RESOLUTION OF THE BOARD OF DIRECTORS OF THE 3RD RESPONDENT BANK DT.

EXT.R3(a):- COPY OF THE PROCEEDINGS OF THE REGISTRAR OF CO- OPERATIVE SOCIETIES, THIRUVANANTHAPURAM DT.24.2.99.

EXT.R3(b):- COPY OF THE PROCEEDINGS OF THE REGISTRAR OF CO- OPERATIVE SOCIETIES DT.18.10.02.

EXT.R3(c):- COPY OF THE PROCEEDINGS OF THE REGISTRAR OF CO – OPERATIVE SOCIETIES DT.23.10.04.

EXT.R4(D):- COPY OF THE ORDER DT.20.6.06 ISSUED BY 1ST RESPONDENT TO 3RD RESPONDENT.

/TRUE COPY/

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K.PADMANABHAN NAIR, J.

W.P.(C)No.35425 OF 2004 & 27579 OF 2006

Dated this the 9th day of February, 2007

J U D G M E N T

These two writ petitions are filed for issuing a writ of mandamus or such other writ, direction or order directing the respondents to appoint the petitioners to the existing vacancies after removing the provisional hands from the service of 3rd respondent Bank. There is also a prayer to issue a direction to give appointments with retrospective effect, in case where provisional hands have been working in the existing vacancies.

2. The 3rd respondent is a Co-operative bank registered under the provisions of the Co-operative Societies Act, 1969 having its Head Office in Kalpatta. It has a number of branches. There were only 34 persons were working as Clerk cum Cashier and with those staff strength the bank will not be able to function properly. It is further averred that the 2nd respondent had reported to the 1st respondent that there are 56 vacancies to be filled up in the service of the 3rd respondent Bank. The 5th respondent, Public Service Commission who invited application for the post of Clerk cum Cashier in the Wayanad District Co-

operative Bank. The writ petitioners were applicants. They appeared for the test. The rank list was published. The 1st petitioner in W.P.(C)No.35425/2004 was ranked 16 with Ezhava community quota the 2nd petitioner was ranked 13 in open merit and 3rd petitioner was ranked 34 with (Viswakarma) community benefit. The 1st petitioner in W.P.(C)No. 27579/2006 was assigned 15th rank in 2nd list and 2nd petitioner assigned 26th rank in the 2nd list . Both are open merit candidates. Petitioners were not advised or appointed till date. The petitioners allege that the 3rd respondent is denying the opportunity to the rank holders included in the list prepared by the PSC and filled up those vacancies with provisional hands. In paragraph 5 of the W.P.(C) No.35425/2004, the instance of one Cicily Louise was pointed out. It is alleged that she was working in Pulpally branch of the 3rd respondent bank on a casual basis. The further averred that the list expired on 31. 12.2004 and the appointment of the 3rd respondent is to fill up those posts with temporary hands so as to deny the legitimate claims of the petitioners. On 15.12.2004 this court directed the 3rd respondent bank to report all existing vacancies in the post of Clerk cum cashier including those which were filled up by the temporary provisional/daily waged hands

to the P.S.C on or before 20th December, 2006. On 20th December, 2004 the 3rd respondent has filed a counter affidavit contending that there were no vacancies in the post of Cashier cum Clerk in the Wayanad District Co-operative Bank. It is contented that the strength of the Clerk/Cashier/Typist cum Clerk in Wayanad Co-operative Bank was only 36. The averment that the bank had filled up the regular vacancies with casual or provisional employees was denied. It is specifically contented that no provisional hands are working in the post of Clerk/Cashier/Typist cum Clerk in Wayanad District Co-operative Bank. Regarding the allegation that Smt. Cicily Louise is working as a casual employee it was contended that she was not appointed by the bank. It is averred that she was engaged by Perfect Software, a concern which was entrusted with the computerisation work of the bank to assist that agency in carrying out the work. It is specifically contented that Smt. Cicily Louise is not paid by bank. On 21.12.2006, the learned single judge passed an order directing the 3rd respondent to report 23 vacancies of Cashier/Clerk provisionally. It was further ordered that the direction is only provisional and the advise memo need not be issued without further orders from the

court. That order was challenged by the 3rd respondent before the Division Bench in W.A.No.138/2005. The Division Bench did not interfere with the order on the ground that there is no direction to issue appointment orders and learned judge had only directed the 3rd respondent to report the vacancies. Subsequently the petitioners filed a contempt case as C.C.C.No.523/2005 alleging non compliance of the order passed by the learned single judge. It is seen that the Division Bench which dealt with the contempt matter issued a direction to the 3rd respondent Bank to file an affidavit. A direction was issued to the Joint Registrar of Co-operative Societies to produce files. The 2nd respondent filed an affidavit on 17.7.2006 in which it was specifically averred that the 2nd respondent is not in the possession of any file relating to this particular matter and letters dated 4.11.2003 and 15.9.2004 referred to Ext.P2 are available and those documents are handed over to the Special Government Pleader. 3rd respondent Bank filed a counter affidavit in W.P.(C)No.35425/2006 on 20th November, 2006 contending that the order of the Joint Registrar dated 17.12.2004, marked as Ext.P4 was received by the Bank only on 22.12.2004 and immediately a meeting of managing committee

was held on 26.12.2004. Though it was not feasible to appoint any person they had recommended to appoint three more persons in compliance with the order of this court. Petitioners have filed a reply affidavit contending that in the budget proposal for the year 2005-06 it is admitted that the existing staff strength have arisen to 144. The contention of the 3rd respondent that there were no vacancies was denied.

3. The crucial question arising for consideration in this case is whether the bank had appointed any provisional hands while a rank list published by the PSC was in force so as to defeat the legitimate claims of persons whose names are included in the list. In this connection it is very pertinent to note that the list expired on 31.12.2004. Though the bank had taken a decision to report three vacancies those vacancies were reported only on 1.1.2005 i.e., after the expiry of the list. The Standing Counsel for the PSC had stated that since the list had already expired , the PSC had initiated steps for conducting a new test for the three vacancies reported and notification was issued on 24.4.2006.

4. If as a matter of fact the bank with a malafide intention of denying a legitimate claim of any person whose name is

included in the rank list published by the PSC filled up those vacancies by appointing provisional/temporary/daily wages hands, I am of the view that this court cannot close its eyes and dismiss the writ petition. But in this case there were only 36 vacancies for the post of Cashier/Clerk/Typist cum Clerk vacancies. Ex.P4 dated 17.12.2004 shows that another eight vacancies were created. In that order itself it is specifically stated as item No.10 that the post of Clerk/ Cashier/Typist cum Clerk is 36+8=44. So it is evidently clear that till 17.12.2004 there were only 36 vacancies. If at all there was any inaction or delay on the part of the 3rd respondent, that was only from 17.12.2004 till 31.12.2004. The allegation of the petitioners that bank filled up regular vacancies using temporary/daily wage hands is not established. The learned counsel appearing for the petitioners has made available a list of employees of the bank which he obtained from the office of the bank. It is argued that in the list of employees 14 posts are noted as 'PTS' and they are actually the daily wage or casual employees. It is denied by the counsel for the 3rd respondent as well as the Standing counsel for PSC. It is submitted that those 14 employees are part time sweepers working in the service of the bank. There is no

material available on record to show that the 3rd respondent bank with a malafide intention of defeating the legitimate claims of the petitioners in these two writ petitions filled up regular vacancies by using temporary/casual/daily wages employees. As already stated if at all there is any omission that is to be filled up against eight vacancies which arose after 17.12.2004. The stand taken by the bank is that they received the communication only on 23.12.2004. Merely because there is a delay of inaction on the part of the bank to report the vacancies arose on 17.12.2004 before the expiry of the list, it cannot be held that it is with a malafide intention to defeat the claim of the petitioners. It is submitted by the counsel for the petitioners that one of the petitioners has received a communication from the 1st respondent to the effect that in Ext.P4 Government Order only eight vacancies are reported. Those eight vacancies are reserved for direct recruits and the bank can fill another eight vacancies by promotion. Even assuming that there are another eight vacancies going by the wording of the letter itself such vacancies cannot be claimed by any candidate from the open market.

5. Learned counsel appearing for the 3rd respondent bank

has relied a decision reported in **State of Orissa and others v. Bhikari Charan Khuntia and others** [2003(10)SCC 144] and argued that the petitioners have not acquired any vested right. He has relied on a decision reported in **Punjab State Electricity Board and others v. Malkiat Singh** [2005(9)SCC 22] where the Supreme Court has held that the mere inclusion of the name of a candidate in the select list does not confer on him any vested right to get an appointment.

6. The prayer in the writ petitions is to issue a mandamus to the 3rd respondent. Writ of mandamus can be issued only if a statutory duty is cast upon the 3rd respondent to make an appointment. In view of the decision of Apex Court in Malkiat Singh's case it is not possible to hold that the statutory duty is cast upon the 3rd respondent- bank to fill up 18 or 16 vacancies which arose after 17.12.2004. No writ of mandamus can be issued. Further it is to be noted that the petitioner in W.P.(C) No.27579/2006 approached this court by filing this writ petition only on 18.10.2006 though the list expired on 31.12.2004. There is nothing on record to show that the 3rd respondent has appointed any casual employee/ temporary employee in the open vacancies. So these writ petitions are only to be dismissed.

7. The learned counsel for the petitioners submitted that atleast in respect of three posts, which is reported by the bank a direction may be issued to the respondents to appoint the petitioners from the list. The vacancies were reported after the expiry of the list. The list had already expired in 31.12.2004. The standing counsel for the Public Service Commission has stated that on receipt of that communication, PSC had already initiated steps for conducting new test and notification was issued on 24.2.2006. So it is not just and proper to issue such a direction.

In the result W.P.(C)Nos. 35425/2004 and 27579/2006 are dismissed.

(K.PADMANABHAN NAIR, JUDGE)

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